

A RESOLUTION directing the Executive Director to secure from the Regional Administrators of EPA Regions 2 and 3 their written concurrence as to the water quality endpoints for the PCB TMDL to be developed for Zone 6; to proceed with notice and comment rulemaking on a revised human health water quality criterion for PCBs; and to take steps to develop recommendations for implementing water quality criteria that cannot be achieved within one permit cycle.

WHEREAS, a consent decree and settlement agreement between the U.S. Environmental Protection Agency, the American Littoral Society and the Sierra Club has established a date of December 15, 2006 for the establishment of a TMDL for PCBs for Zone 6 of the Delaware River (i.e., the Delaware Bay); and

WHEREAS, the Commission has agreed to develop a Stage 1 TMDL for PCBs for Zone 6 at the request of the States of Delaware and New Jersey and on behalf of those states and the U.S. Environmental Protection Agency; and

WHEREAS, the Commission also has agreed to develop Stage 2 TMDLs for PCBs for Zones 2 through 6 on behalf of the U.S. Environmental Protection Agency and has proposed to do so by a target date of December 2008; and

WHEREAS, in order for the Commission to prepare the required basis and background documentation and complete the public participation process for the Stage 1 TMDL for PCBs for Zone 6 by December 15, 2006, the complex mathematical modeling process for development of the TMDL must be initiated by mid-January, 2006; and

WHEREAS, in order to begin the modeling process for development of the PCB TMDL for Zone 6, the Commission staff requires a TMDL endpoint (or endpoints), which is (are) the applicable water quality criteria; and

WHEREAS, in order to begin the modeling process for the Stage 2 TMDLs for Zones 2 through 6, the Commission staff also requires a TMDL endpoint (or endpoints) for these zones; and

WHEREAS, the Commission's Toxics Advisory Committee (TAC) unanimously voted in January 2001 that the DRBC should revise its water quality criteria for PCBs to reflect the most current EPA guidance, including the use of bioaccumulation factors and estuary-specific data on fish consumption; and

WHEREAS, by Resolution No. 2003-11 in March of 2003, the Commission authorized the Executive Director, among other things, to initiate notice and comment rulemaking to revise the Commission's PCB human health water quality criteria effective on or after January 1, 2004 to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current U.S. Environmental Protection Agency guidance on development of human health water quality criteria; and

WHEREAS, such rulemaking was postponed pending additional technical effort by the Toxics Advisory Committee to refine the revised criterion and a separate effort by the Implementation Advisory Committee to develop recommendations for achieving reductions in PCB loadings to the river; and

WHEREAS, the TAC through its Toxics Criteria Subcommittee rigorously applied the most recent estuary-specific data to develop a revised human health water quality criterion for PCBs of 16 picograms per liter, to be applied in Water Quality Management Zones 2 through 6 (the tidal Delaware River and Delaware Bay); and

WHEREAS, on July 7, 2005 the TAC voted with three abstentions (by members representing the municipal, industrial and agricultural sectors), but without objection, to recommend to the Commission that notice and comment rulemaking be initiated on a revised water quality criterion for PCBs of 16 picograms per liter for the protection of human health from carcinogenic effects; and

WHEREAS, also on July 7, 2005 the TAC voted to recommend that the Commission “expedite development and adoption of variance language or other alternative implementation mechanisms for incorporation into the DRBC’s *Water Quality Regulations* where water quality criteria are currently unattainable”; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Executive Director is authorized and requested to submit a letter to the regional administrators of U.S. EPA Regions 2 and 3 seeking their written concurrence that the existing human health water quality criteria for PCBs in the Delaware Estuary should be used as the basis for the TMDL for PCBs in Zone 6, to be established by the U.S. EPA in December 2006. The controlling criteria are: 64 picograms per liter in Zone 6; 7.9 picograms per liter in lower Zone 5; and 44.8 picograms per liter in upper Zone 5 and all of Zone 4.
2. The Executive Director is further authorized and requested to proceed with notice and comment rulemaking in accordance with Resolution No. 2003-11 on a proposal to revise the Commission’s ambient human health water quality criteria for PCBs, which currently vary by Water Quality Management Zone, to a uniform value of 16 picograms per liter to become effective on or after January 1, 2007. The proposed value of 16 picograms per liter was calculated using site-specific data on fish consumption, site-specific bioaccumulation factors, and the current U.S. Environmental Protection Agency guidance on methodology for the development of human health criteria. Also in accordance with Resolution No. 2003-11, public comment on all assumptions applied in developing the proposed criterion, including the appropriate cancer risk level, should be sought.
3. In accordance with a recommendation submitted to the Commission by the Toxics Advisory Committee, the Executive Director is authorized and requested to convene a working session or sessions within the next few months to develop recommendations for

implementing criteria for bioaccumulative pollutants. The recommended approaches should be consistent with the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework while also reflecting principles of adaptive management. Participants should include staff of the DRBC, EPA Regions 2 and 3 and the signatory state environmental agencies, along with agency staff from outside the Basin who are experienced in developing or applying rules designed to implement water quality criteria that cannot be achieved within a single NPDES permit cycle. The Executive Director is asked to share the recommendations of the working group with the TAC and the IAC and obtain their feedback.

4. Simultaneously with the notice and request for comment to be issued in accordance with Paragraph 2 above, the Executive Director is asked to request recommendations from the public as to the best approaches for implementing water quality criteria for bioaccumulative pollutants, consistent with both the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework and principles of adaptive management.

This Resolution shall take effect immediately.

/s/ Kevin C. Donnelly

Kevin C. Donnelly, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

Adopted: December 7, 2005